(1)

Supreme Court, U.S.
FILED

No. 98 1867 MAY 20 1999

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1998

Fred Davis

Petitioner,

v.

Anthony Lauria

Hanover Insurance Company

Respondents.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Fred Davis
353 Bryant Street
Malden, Massachusetts 02148
(781) 322-8223

36pp

ISSUES PRESENT

I.

Should the court grant certiorari to address the public interest involving the disabled, partial disabled, pro se litigants and minorities. These individuals are being denied justice in the Massachusetts Courts.

II.

Should the court grant certiorari to address the public interest of the elderly population, who are in danger from Insurance Companies/other Companies and individuals who are committing financial exploitation against the elderly.

It is a vital issue that this Honorable Court should issue a writ of certiorari and address the issue in order to protect the senior citizens.

III.

Should this Court grant certiorari in order to protect the petitioner's United States Constitutional Rights.

IV.

Should this Court grant certiorari when the inferior courts erred in its decision.

V.

Should the court grant certiorari when the inferior courts failed to address the acts and practices of the respondents that were unfair and deceptive within the meaning of M.G.L. Chapter 93A.

VI.

Should the court grant certiorari when the inferior courts failed to address the issue of M.G.L.Chapter 19A § 14 "Financial Exploitation" against an elderly person.

VII.

Should the court grant certiorari when the inferior courts failed to address the issue of placing sanctions against George R. Suslak for telling Falsehoods to the courts which are violations of the Canon Rules and the Attorney's Oath M.G.L. 221 section 38.

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Petitioner, Fred Davis, respectfully prays that a Writ of Certiorari issue to review the decision of the Massachusetts Supreme Judicial Court and grant him the following relief: (1) Remand the action to the Suffolk Superior Court for trial by jury. (2) Resolve the public interest issue pertaining to the disable, partial disabled, pro se litigants and minorities allowing them to receive the same justice as others. (3) Resolve the public interest issue in protecting the Elderly population in America. (4) Protect the United States Constitutional Rights to all Americans. Place sanctions against George R. Suslak for telling falsehoods to the Courts. Any other relief the court deems appropriate.

OPINIONS BELOW

The Suffolk Superior Court denied the re-transfer from the Boston Municipal Court to the Massachusetts Superior Court attached (APP. p. 16)

The Massachusetts Appeals Court upheld the lower court's decision (APP. p. 17).

The Massachusetts Supreme Court denied the Petitioner's Further Appellate Review was denied (APP. p. 18).

JURISDICTION

March 26, 1999, the Massachusetts Supreme Judicial Court denied the petitioner's Further Appellate Review Application.

This petition is filed within the 90 days of the Massachusetts Supreme Judicial Court's decision.

This Court's jurisdiction is invoked under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United states Constitution provides:

"All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States: nor shall any State deprive any person of life, liberty or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the law"

STATEMENT OF THE CASE

The petitioner, Fred Davis is a senior citizen residing at 353 Bryant Street Malden, Massachusetts.

Anthony Lauria, Hanover Insurance Company's insured, negligently operated a motor vehicle causing a motor vehicle accident.

The petitioner received severe bodily injuries resulting in partial permanent disability because of this accident.

The petitioner has been unable to work, due to the accident, and has lost approximately $46,000.00 in wages, which resulted in the loss of his employment.

In addition, there was excessive damage to the petitioner's motor vehicle and large medical bills.

Plaintiff is unable to work and needs constant care.

Hanover Insurance Company has violated both Massachusetts General Laws C. 93A "unfair or deceptive acts or practices in the conduct of any trade or commerce" and Massachusetts General Laws 19A § 14 "monetary loss to an elderly person".

The respondent's attorney, George R. Suslak told falsehoods to the court which is in violations of both the Canon Rules and the Attorney's Oath Massachusetts General Laws 221 section 38.

May 7, 1997, the petitioner filed his Motion For Scheduling Trial Date and Plaintiff's Motion to Amend Complaint (APP. p. 8).

These motions were to be placed on the motion list to be heard on May 16, 1997, the respondents did not oppose these motions.

Petitioner appeared in court on May 16, 1997, however, his motions were not on the motion list.

The respondents did not appear in court for the scheduled hearing on these two motions.

The petitioner inquired in the Clerk's Office as to why his motions were not on the motion list, petitioner was informed that the case was settled, however, that is not true.

The case was never settled and the docket sheet clearly shows that fact, no notices were sent, to inform the parties that the case was settled (APP. P. 15) there is no document in the case file to substantiate that the case was settled.

The petitioner filed Motion To Remove Dismissal Judgment (APP. P. 1).

There was no opposition from the respondent. The district court denied this motion.

Petitioner filed Request For Retransfer Back To The Superior Court.

Respondents filed Motion to Vacate Retransfer to the Superior Court. Petitioner filed his Motion in Opposition To Vacate Retransfer to the Superior Court (APP. P. 5).

Petitioner filed Plaintiff's Motion For Sanctions Against George R. Suslak For Telling Falsehoods to the Court (APP. p. 11). The court did not

rule on this motion.

The Suffolk Superior Court dismissed the action.

Petitioner appealed the lower court's decision, which was upheld by the Appeals Court.

Petitioner appealed to Massachusetts Supreme Judjcial Court For Appellate Review. This was denied.

Now the petitioner, Fred Davis, requests the Honorable Court to grant a Writ of Certiorari.

ARGUMENT

REASONS FOR GRANTING PETITION

I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PUBLIC INTEREST INVOLVING THE DISABLED, PARTIAL DISABLED, PRO SE LITIGANTS AND MINORITIES FROM BEING DENIED JUSTICE

The disabled, partial disabled, pro se litigants, and minorities are being denied justice in the Massachusetts Court System.

These individuals are not receiving justice and are being treated differently in the courtrooms than other litigants.

They are being taken advantage by the court, they are not allowed to present their cases and their actions are just dismissed by the court.

Their Constitutional Rights are being violated as they are denied due process of law and equal protection of the law.

It not only is it a miscarriage of justice it is sad to see how these individuals in this category are being treated by the Massachusetts Courts and judges.

II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PUBLIC INTEREST OF SENIOR CITIZENS FROM INDIVIDUALS WHO ARE COMMITTING FINANCIAL EXPLOITATION AGAINST THE ELDERLY

The elderly population will greatly increase as the baby boomers will become senior citizens.

Senior citizens are great targets for Insurance Companies, other companies, individuals and unscrupulous attorneys who are using fraud and other means to steal monies, property, etc., from senior citizens.

Now is the time to stop these unscrupulous people who prey on the seniors and punish them.

This punishment against seniors could start here with the respondent, Hanover Insurance Company and their unscrupulous attorney George R. Suslak for stealing monies from the petitioner and ruining his life.

III. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER'S UNITED STATES CONSTITUTIONAL RIGHTS

The United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law.

The United States Constitution Amendment XIV:

states: "All persons born or naturalized in the united States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny any person within its jurisdiction the equal protection of the laws.

Petitioner was denied due process of law and equal protection of the law.

His case was dismissed and he was denied a trial based on an incorrect docket sheet entry that stated that the case was settled.

This incorrect entry clearly shows that the petitioner was not notified (App. p. 15), and their is no document in the court record to substantiate that the case was settled. **IN GRIFFIN v. POWERS 301 N.E. 2d 691 (1973)** the court allowed petition to vacate judgment because of the failure to receive notice of the original finding.

IV: CERTIORARI SHOULD BE GRANTED WHEN THE INFERIOR COURTS ERRED IN ITS DECISIONS

The petitioner was not notified by the court that his action was reported settled (APP. p. 15)

This fact is clearly revealed in the court's docket entry sheet (APP.p. 15) that there is no entry that indicated that notices of the order was mailed to the petitioner nor any one else.

Petitioner learned of this entry when he filed his Motion For Scheduling Trial Date and Plaintiff's Motion To Amend Complaint.

May 16, 1997, appeared in court, however, his motions were not on the motion list, when inquired why his motions were not on the list it was at that time he was informed that the case was settled.

The case was not settled, and the petitioner was not notified of the action by the Court (app. p. 15).

The court missed its mark in using the falsehoods of the respondent's attorney George R. Suslak in making its decision.

George R. Suslak informed the court that this action was settled years ago (APP. p. 14), which is a falsehood.

George R. Suslak shows no paid medical bills that were paid by the respondent. which as a result of the negligence of the respondent's insured Anthony Lauria left the petitioner partially disabled.

George R. Suslak shows no evidence of a cancelled check that petitioner was paid for his injuries, nor a cancelled check that the petitioner was paid for damages to his motor vehicle and a cancelled check for his lost wages.

George R. Suslak lied to the court and knowingly and wilfully obstructed justice.

As in **GRIFFIN v. POWERS** **(SUPRA)** when parties fail to receive notice of court orders, it is

appropriate to vacant judgment and go forth with the trial.

The court has a judiciary duty to notify parties of its action in the case.

The district court was correct in retransferring the action to the Superior court, because the issue before the court was not a time frame issue but an error on the court's part.

Therefore, the petitioner was entitled to a trial by jury.

V. CERTIORARI SHOULD BE GRANTED TO ADDRESS MASSACHUSETTS GENERAL LAWS CHAPTER 93A UNFAIR AND DECEPTIVE BUSINESS PRACTICES

Massachusetts General Laws c. 176D § 3 § (9) f inserted by St. 1972, c 543 § 1, provides that it is an unfair claim settlement practice for an insurer to fail "to effectuate prompt, fair and equitable settlements of claims in which liability has becomes reaonably clear". Massachusetts General Laws c. 93A, § 2 (a) (inserted by St. 1967 C. 813 § (1), covers such insurance practices in its prohibition of "unfair or deceptive acts or practices in the conduct of any trade or commerce". SEE DODD v. COMMERCIAL UNION INSURANCE COMPANY 373 Mass at 78, "provides for recovery of up to three not less than two times actual damages..."

Hanover Insurance Company admitted liability, however, they used means of fraud to inform the court that the case was settled.

Respondent, Hanover Insurance Company has

submitted no evidence to the court to substantiate that the case was and payments were made to Davis.

The respondent is engaged in unfair and deceptive acts and practices in the conduct of their trade/ commerce.

Petitioner is entitled to recovery up to three times his damages by law.

VI. CERTIORARI SHOULD BE GRANTED TO PUNISH THE RESPONDENT FOR VIOLATION OF MASSACHUSETTS GENERAL LAWS CHAPTER 19A § 14 FINANCIAL EXPLOITATION AGAINST AN ELDERLY PERSON

Massachusetts General Law Chapter 19A § 14 "Financial Exploitation" "an act or omission by another person, which causes a substantial monetary loss to an elderly person, which gain would otherwise benefit the elderly person".

Petitioner is an elderly person and is a victim of Financial Exploitation by the respondent. They have caused the petitioner a gross monetary and property loss which gain would have benefit the petitioner.

Their acts have caused the petitioner a gross amount of medical bills leaving him with a permanent partial disability and unable to care for himself.

Respondents have caused the petitioner great damage to his automobile.

The respondents have caused the petitioner lost wages in the amount of approximately $46,000.00, leaving him unable to work.

Respondents have used a cover-up to hide these acts by telling falsehoods to the court that the case has been settled, knowingly petitioner did not receive one penny in settlement.

VII. CERTIORARI SHOULD BE GRANTED IN ORDER FOR SANCTIONS AGAINST GEORGE R. SUSLAK CAN BE INVOKED

Canon Rules 1 Disciplinary Rules

DRI - 102 Misconduct

(A) A lawyer shal not:

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

Massachusetts General Laws 221 section 38

ATTORNEY'S OATH

"You (name) solemnly swear that you will do no falsehood, nor consent to the doing of any in court " So help you God.

August 14, 1997, George R. Suslak engaged in conduct involving dishonest, deceit, and told falsehoods to the court by making the following statements to the Court: "In support thereof, the defendants states that this action was settled years ago....." and furthermore, the defendant states that the plaintiff failed to comply with Superior Court Rule 9A in connection with the filing

of this Motion" (App. p. 14).

George R. Suslak shows no evidence that this action was settled years ago. He shows no paid medical bills that were paid by the respondents. He shows no evidence of a cancelled check that the petitioner was paid for his injuries, no cancelled check that petitioner was paid for damages to his motor vehicle.

In addition, George R. Suslak shows no evidence that petitioner failed to comply with Superior Court Rule 9A.

George R. Suslak in this motion he listed Exhibits A, B, C, D, E, and F, however, none of these documents were affixed to attorney Suslak's document.

The facts clearly reveal that Mr. Suslak is not being honest and is hiding the true facts of the case.

George R. Suslak has engage in conduct involving dishonesty, fraud, deceit, and misrepresentation. He has engaged in conduct that is prejudicial to the administration of justice, which is a violation of the Canon Rules.

George R. Suslak has engaged in telling falsehoods to the court, which is in violation of the Attorney's Oath. **SEE Groh v. Viglet** 34 Ohio Law R132 "an act done with actual intent to mislead and deceive another is an act in bad faith", **SEE HILGENBERG v.NorthRUP** 33 N.E. 786,787, 134 Ind 92 "Bad faith and fraud are synonymous".

CONCLUSION

WHEREFORE, Petitioner, Fred Davis, respectfully prays that a Writ of Certiorari issue to review the decision of the Massachusetts Supreme Judicial Court and correct the miscarriage of justice inflicted upon him.

Respectfully submitted,

Fred Davis

Fred Davis
353 Bryant Street
Malden, Ma 02148
(781) 322 8223

APP. 1

COMMONWEALTH OF MASSACHUSETTS

BOSTON MUNICIPAL COURT

SUFFOLK, ss.

CIVIL BUSINESS
No. T-41026

FRED DAVIS, PLAINTIFF

vs.

ANTHONY LAURIA, DEFENDANT

PLAINTIFF'S MOTION TO REMOVE DISMISSAL JUDGMENT

Now comes the plaintiff, Fred Davis, in the above-cited action and requests the Court to remove dismissal judgment as this action was not settled.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO REMOVE DISMISSAL JUDGMENT

May 7, 1997, the plaintiff filed with the court Plaintiff's Motion For scheduling Trial date and Plaintiff's Motion To Amend Complaint.

These motions were to be placed on the Motion List to be heard on May 16, 1997.

However, when the plaintiff appeared in Court on May 16, 1997, his motions were not on the Motion List.

The plaintiff inquired in the Clerk's Office

as to why his motions were not on the Motion List

Plaintiff was informed that the case was settled.

This case has not been settled.

Therefore, the plaintiff requests the Court to remove the dismissal Judgment, in order that the plaintiff can move this action for trial.
Based on the foregoing the plaintiff requests the Court to allow his motion.

By,
S/Fred Davis, Plaintiff
353 Bryant Street
Malden, Ma 02148

HEARING NOTICE

The hearing on the foregoing motion will be heard June 6, 1997, at 9:00 A.M. at the Old Courthouse Room 394 Boston, Massachusetts.

CERTIFICATE OF SERVICE

I, certify that I mailed a true copy of plaintiff's Motion To Remove Dismissal Judgment to: Frank Pietrasik, Hanover Insurance Company 35 Braintree Hill Office Park Suite 301 P.O. Box 9159. Braintree, Ma 02184 Cerified Mail No. P 576 480 058.

Date 5-7-97 S/ Fred Davis

APP. 3

COMMONWEALTH OF MASSACHUSETTS

BOSTON MUNICIPAL COURT

SUFFOLK, ss

CIVIL BUSINESS
NO T-41026

FRED DAVIS, PLAINTIFF

vs.

ANTHONY LAURIA, DEFENDANT

AFFIDAVIT OF FRED DAVIS

I, Fred Davis being first duly sworn and say:

1. I am the plaintiff in the action Fred Davis v. Anthony Lauria Case No. T-41026.

2. There has been no reponse from Hanover Insurance Company, since court appearance June 6, 1997.

3. June 6, 1997, Hanover Insurance Company did not want to settle this action.

4. Plaintiff requests the Court to Remove — Dismissal Judgment, since this action has not been settled.

5. Plaintiff requests that a trial before a jury be scheduled as soon as possible.

6. Plaintiff at time of trial will have his employers testify to the fact that plaintiff loss wages in the amount of approximately $46,000.00 due to the motor vehicle accident due to the

negligence of Anthony Lauria.

7. Plaintiff at time of trial will have his health provider testify to his injuries due to the motor vehicle accident which resulted in his partial disability.

8. Plaintiff will submit at time of trial medical bills as a result of this accident.

9. It is the plaintiff's understanding that Hanover Insurance Company's insured Anthony Lauria admitted responsibility for the accident.

10. Based on testimony of witnesses and evidence submitted at time of trial the jury's verdict will be for the plaintiff.

11. I have read the foregoing consisting of two pages and swear that it is true to the best of my knowledge and belief.

S/ FRED DAVIS

On this day of June, 1997 Fred Davis personally appeared before me and being by me first duly sworn, did make oath and say that the matter set forth in the foregoing Affidavit is true to his own knowledge and belief.

S/ JOSEPHINE CAVALREIO
NOTARY PUBLIC
MY COMMISSION EXPIRES:
11/23/97

APP. 5

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK
THE SUPERIOR COURT

DOCKET #SUCV90
00408C

FRED DAVIS, PLAINTIFF)
)
vs.)
)
ANTHONEY LAURIA, DEFENDANT)

PLAINTIFF'S MOTION IN OPPOSITION TO VACATE RETRANSFER TO SUPERIOR COURT

Now comes the plaintiff, Fred Davis, in the above-cited action and opposes the defendant's Motion To Vacate Retransfer to Superior Court as the defendant's motion was done in bad faith, Defendant's Motion does not comply with Massachusetts Rules of Civil Procedure and Mr. Suslak violated his Attorney's Oath Massachusetts General Laws 221 section 38 by commiting falsehoods to the Court. There are violations of deceptive practices, crimes against the disabled and Massachusetts General Laws Chapter 19A § 14 "Financial Exploitation".

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION IN OPPOSITION TO VACATE RETRANSFER TO SUPERIOR COURT

Pursuant to Massachusetts Rules of Civil Procedure prior to filing a Motion the moving party must confer with the party before filing a motion, however, this was not the case Mr.

Suslak merely sent the motion to the plaintiff without conferring with him, which is a violation of the Massachusetts Rules of Civil Procedure and must be stricken.

The defendant is acting in bad faith and his attorney is violating his Attorney's Oath which states in pertinent part: **ATTORNEY'S OATH**
"YOU (NAME) SOLEMNLY SWEAR THAT YOU WILL DO NO FALSEHOOD, NOR CONSENT TO THE DOING OF ANY IN COURT."

June 6, 1997, the plaintiff appeared in the Boston Municipsl Court on Plaintiff's Motion to Remove Dismissal Judgment, the Court denied the Plaintiff's motion and the plaintiff filed a timely Motion To Retransfer to the Superior Court and plaintiff was notified of the transfer on July 7, 1997.

Therefore, when Mr. Suslak informs the court that plaintiff's transfer is not timely he is committing a falsehood to the court.

There is no evidence in the Court's record that the case was settled by plaintiff's attorney Robert Abrams nor by the plaintiff Fred Davis.

The mere fact that there is an entry on the docket sheet has no bearing on the case, since there is no evidence to substantiate the action was settled.

The defendant and his attorney are using deceptive business practices and crimes against the disabled to cheat the plaintiff out of monies.

In addition plaintiff is an elderly person and the defendant and his attorney is using

"Financial Exploitation" to cheat the plaintiff from monies which is a violation of Massachusetts General Laws Chapter 19A § 14.

The bottom line is that the defendant and his attorney are continuing to harass and hurt the plaintiff as the plaintiff is disabled because of the defendant.

Mr. Suslak in his Motion Page 1 as (Exhibit A), however, there is no Exhibit A affixed to his motion page 1 (Exhibit B) page 1 (Exhibit C) page 2 (Exhibit D) page 2 (Exhibit E) Page 2 Exhibit F) as previous state none of the Exhibits were furnished to the plaintiff. There is no Certificate of Service.

Therefore, the facts clearly reveal that Mr. Suslak is not being honest and is hiding the true facts of the case.

Wherefore, the plaintiff moves the Court to deny the defendant's motion and schedule this action before a jury as soon as possible.

By,
S/ Fred Davis, Plaintiff

CERTIFICATE OF SERVICE

I certify that I mailed a true copy of Plaintiff's motion in opposition to vacate retransfer to superior court to: George Suslak Stantion & Lang P.O. Box 1080 Lynnfield Woods Office Park 200 Broadway U.S Route 1 South Lynnfield, Ma 01940 2314 certified mail No. P 576 480 131 postage prepaid.

7-23-97 S/Fred Davis

APP. 8

COMMONWEALTH OF MASSACHUSETTS
BOSTON MUNICIPAL COURT

SUFFOLK, ss

CIVIL BUSINESS
NO. T-4106

FRED DAVIS, PLAINTIFF

vs.

ANTHONY LAURIA, DEFENDANT

PLAINTIFF'S MOTION TO AMEND COMPLAINT

Now comes the plaintiff, Fred Davis, in the above-cited action and moves the Court to allow him to Amend His Complaint (1) Pursuant to M.G.L. c 93A to include triple damages. (2) Pursuant to M.G.L.c. 19A § 14 "Financial Exploitation" on the part of the defendant. (3) To increase the ad damnum in the sum of $500,000.00.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND COMPLAINT

At all times relevant to this action Hanover Insurance Company was engaged in trade or commerce in the Commonwealth of Massachusetts, within the meaning of M.G.L.c. 93A.

The acts and practices of Hanover Insurance Company were unfair and deceptive within the meaning of M.G.L. c. 93A.

The acts and practices of defendant were

willful and knowing violations of M.G.L. c. 93A.

As a direct and proximate result of the unfair and deceptive acts of Hanover Insurance Company, plaintiff suffered substantial losses of money and property.

The amount of monies determined by the jury at time of trial is to be tripled pursuant to M.G.L. c. 93A.

The plaintiff is a senior citizen and has been "Financial Exploitation" by Hanover Insurance Company which is in violation of M.G.L. 19A § 14. Amount of monies are to be determined by the jury at time of trial.

Due to the additional pain and suffering caused by the Hanover Insurance Company on the plaintiff, the addamnum is to be increased to the sum of $500,000.00.

Therefore, based on the foregoing reasons the plaintiff moves the court to allow his motion.

By.
S/ Fred Davis
353 Bryant Street
Malden, Ma 02148

HEARING NOTICE

The hearing on the foregoing Motion "Plaintiff's Motion To Amend Complaint" will be heard May 16, 1997, 9:00 A.M. at the Old Courthouse Room 394 Boston, Masachusetts.

CERTIFICATE OF SERVICE

I, certify that I mailed a true copy of Plaintiff's

APP. 10

Motion To Amend Complaint and Hearing Notice to: Frank Pietrasik, Hanover Insurance Company 35 Braintree Hill Office Park Suite 301 P.O. Box 9159, Braintree, Ma 02184 certified Mail: 576 480 152.

Date 4-24-97 S/Fred Davis

APP. 11

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK
THE SUPERIOR COURT

DOCKET #SUCV90-0040BC

FRED DAVIS, PLAINTIFF)
)
vs.)
)
ANTHONY LAURIA, DEFENDANT)

PLAINTIFF'S MOTION FOR SANCTIONS AGAINST GEORGE R. SUSLAK FOR TELLING FALSEHOODS TO THE COURT

Now comes the plaintiff, Fred Davis, in the above-cited action and files sanctions against George R. Suslak for telling falsehoods to the Court and violating both the Massachusetts Canon Rules and Attorney's Oath.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS AGAINST GEORGE R. SUSLAK FOR TELLING FALSEHOODS TO THE COURT

Canon 1 - DISCIPLINARY RULES

DRI-102 MISCONDUCT

(A) A lawyer shall not:

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

GENERAL LAWS 221 SECTION 38 ATTORNEY'S OATH

"YOU (NAME) SOLEMNLY SWEAR THAT YOU WILL DO NO FALSEHOOD, NOR CONSENT TO THE DOING IN ANY IN COURT."

August 14, 1997, George R. Suslak engaged in conduct involving dishonestly, deceit, and told falsehoods to the court by making the following statements to the Court: "In support thereof, the defendant states that this action was settled years ago...." and Furthermore the defendant states that the plaintiff failed to comply with Superior Court Rule 9A in connection with the filing to this Motion". SEE, PLAINTIFF'S EXHIBIT "A" AFFIXED HERETO:

George R. Susulak shows no evidence that this action was settled years ago. He shows no paid medical bills that were paid by Hanover Insurance Company, which as a result of the negligence of Hanover's insured Anthony Lauria left the plaintiff partially disabled.

George R. Suslak shows no evidence of a cancelled check that the plaintiff was paid for his injuries, nor a cancelled check that plaintiff was paid for damages to his motor vehicle.

In addition, George R. Suslak shows no evidence that plaintiff failed to comply with Superior Court Rule 9A in connection with the filing of this motion.

The bottom line is that he also engaged in conduct that is prejudical to the administration of justice.

Wherefore, the plaintiff requests the court to

place sanctions and costs against George R. Suslak which the court deems appropriate.

By
S/ Fred Davis
353 Bryant Street
Malden, Ma 02148

CERTIFICATE OF SERVICE

I, certify that I mailed a true copy of the foregoing motion to: George R. Suslak, Stanton & Lang 200 Broadway Lynnfield Woods Office Park P.O. Box 1080 U.S. Route 1 South Lynnfield, Ma 01940-2314 postage prepaid.

Date 8-22-97 S/Fred Davis

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT C.A.NO: SUC90 0040BC

FRED DAVIS,
Plaintiff

VS.

ANTHONY LAURIA,
Defendant

DEFENDANT'S OPPOSITION TO THE PLAINTIFF'S MOTION FOR TRIAL DATE

Now comes the defendant, Anthony Lauria, and hereby opposes the plaintiff's Motion for Scheduling Trial Date. In support thereof, the defendant states that this action was settled years ago and the defendant has moved to vacate the re-transfer of this case from the Boston Municipal Court. Furthermore, the defendant states that the Plaintiff failed to comply with Superior Court Rule 9A in connection with the filing of this Motion.

Respectfully submitted,
S/George R. Suslak, Esquire
STANTON & LANG
200 BROADWAY, P.O. Box 1080
Lynnfield, Ma 01940
(617) 595-1440
BBO#541921

DATED: 8-14-97

PLAINTIFF'S EXHIBIT

APP. 15

DOCKET FRED DAVIS vs. ANTHONY LAURIA NO: 90-0408
NO: T-41026

Additional Trustees

13 10-9-91
14 Reported Settled "30 day NISI order"
for the entry of Dismissal Judgment
Entered.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION
No. SUCV90-00408-C

FRED DAVIS,
Plaintiff

v.

ANTHONY LAURIA,
Defendant

COURT ORDER ON DEFENDANT'S MOTION TO VACATE RE-TRANSFER TO SUPERIOR COURT

After consideration of defendant's motion and plaintiff's opposition, the defendant's Motion to Vacate Retransfer to Superior Court is ALLOWED in this court's view, the Boston Municipal court had no authority after they denied plaintiff's motion to remove the 1991 dismissal of this case to then order it retransferred to the Superior Court. The plaintiff's right to obtain that retransfer ended on November 22, 1991,i.e. ten days after the case was dismissed in the Boston Municipal Court on November 12, 1991.

The decisions of the Appellate Courts make it clear that plaintiff cannot revive this old case by seeking retransfer many years after it's life ended, and the right to claim retransfer ran out in the Boston Municipal Court. See Griffin V. Powers, 1 Mass. App. 846 301 N.E. 2d 691(1973) and Barrett v. Lynn Ladder and Scaffolding Co. 1994 Mass App. Div. 217.

DATED: August 22, 1997 S/ JOHN C. CRATSLEY
JUSTICE OF SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

97-P-2327

FRED DAVIS

vs.

ANTHONEY LAURIA.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The pro se plaintiff appeals from a Superior Court order allowing defendant's motion to vacate an order retransferring this matter from the Boston Municipal Court. In essence, the plaintiff seeks to revive the underlying motor vehicle tort action which was reported settled in 1991. For the reasons, if no other, that principles of res judicata preclude the plaintiff from asserting that there was no settlement of this action by our decision Davis v. Hanover Ins. Co. 40 Mass. App. Ct. 1127 (1996), cert. denied, 117 S. Ct. 685 (1997) 1/ and this that retransfer to the Superior Court would be futile, we affirm. Order allowing motion to vacate retransfer affirmed by the Court (Greenberg, Gillerman & Repaza, JJ). Entered: February 10, 1999.

1/ In the earlier case, we affirmed a summary judgment for the insurer on Davis complaint alleging breach of the settlement agreement. This agreement is evidenced by a written release dated September 20, 1991, which Davis executed, purporting to release the present defendant and the insurer of all claims by Davis arising out of the moror vehicle accident giving rise to the instant action.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS
1412 Courthouse, Boston, Massachusetts 02108
(617) 557-1020

Fred Davis
353 Bryant Street
Malden, Ma 021148

RE: Docket No. FAR-10421

FRED DAVIS

VS.

ANTHONY LAURIA

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that the above-captioned Application for Further Appellate Review has been considered by the Court and is denied.

Jean M. Kennett, Clerk
Dated: March 26, 1999

TO: FRED DAVIS
CHRISTOPHER P. FLANAGAN, ESQUIRE